



Express Mail No. EV336651704US

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Zhaoyu Wang, Stephan Lutz and Karl D. Inglehart  
Application No. : 10/754,451  
Filed : January 9, 2004  
For : METHOD AND APPARATUS FOR LOCATING INTERNAL  
TRANSFER LEAKS WITHIN FUEL CELL STACKS

06/18/2004 STEUMEL1 00000072 10754451

03 FC:1460

130.00 DP

Art Unit : 1745

Docket No. : 130109.465

Date : June 16, 2004

Mail Stop Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION TO ACCEPT APPLICATION WHEN ONE OF THE JOINT INVENTORS  
REFUSES TO SIGN OR CANNOT BE REACHED UNDER 37 C.F.R. § 1.47(a)

Commissioner for Patents:

Pursuant to 37 C.F.R. § 1.47(a), Ballard Power Systems Inc. ("Ballard") hereby petitions to file the above-referenced application on behalf of and as agent for a joint inventor, Zhaoyu Wang ("Mr. Wang"), who has refused to execute an Assignment to Ballard and a Declaration for the above-referenced application. A Declaration and Assignment signed by the other joint inventors, Stephan Lutz and Karl D. Inglehart, is enclosed.

In March 2004, Mr. Wang notified Ballard of his refusal to sign the application papers for the above-referenced application which was filed on January 9, 2004. The enclosed document, Mr. Wang's Employment Agreement with Ballard, shows that Mr. Wang is under an obligation to assign to Ballard Power Systems Inc. the invention that is the subject matter of the above-referenced application (the "Invention") because the invention directly relates to the business of Ballard and relates to actual research or development of Ballard. Further, Mr. Wang conceived of the invention during his period of employment at Ballard and he is a joint inventor. Mr. Wang's subsequent refusal to execute the application papers including the Declaration and

Assignment is in clear violation of his written employment agreement with Ballard. Moreover, Mr. Wang has irrevocably designated and appointed Ballard to execute and file this application. Thus, Ballard has filed the above-referenced patent application on behalf of the joint inventors, as authorized by the joint inventors, to preserve Ballard's rights in the invention.

To the best of Ballard's knowledge, the last known mailing address for Mr. Wang is the following:

#4 John Bricker Road  
Cambridge, Ontario  
Canada N3H 4R8

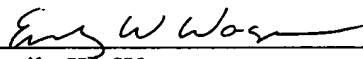
The following attachments set forth the pertinent facts and documents as required under 37 C.F.R. § 1.47(a) and show that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

1. A copy of Mr. Wang's Employment Agreement with Ballard, signed by Mr. Wang on November 22, 2001, whereby Mr. Wang acknowledged and agreed to the terms therein.

2. A Declaration of Cindy Longley setting forth the pertinent facts regarding Mr. Wang's refusal to execute the application papers.

Applicants hereby respectfully request the granting of an updated filing receipt upon filing the Response to Notice to File Missing Parts of Nonprovisional Application.

Respectfully submitted,  
Seed Intellectual Property Law Group PLLC

  
\_\_\_\_\_  
Emily W. Wagner  
Registration No. 50,922

EWV:cew

Enclosures:

Copy of Declaration  
Copy of Assignment  
Copy of Ballard Employment Agreement  
Declaration of Cindy Longley

701 Fifth Avenue, Suite 6300  
Seattle, Washington 98104-7092  
Phone: (206) 622-4900  
Fax: (206) 682-6031

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PTO/SB/01A (08-03).

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## DECLARATION (37 CFR 1.63) FOR UTILITY OR DESIGN APPLICATION USING AN APPLICATION DATA SHEET (37 CFR 1.76)

Title of Invention

**METHOD AND APPARATUS FOR LOCATING INTERNAL TRANSFER  
LEAKS WITHIN FUEL CELL STACKS**

As the below named inventor(s), I/we declare that:

This declaration is directed to:

- ☐ The attached application, or  
☒ Application No. 10/754,451, filed on January 9, 2004,  
☐ as amended on \_\_\_\_\_ (if applicable);

I/we believe that I/we am/are the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought;

I/we have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment specifically referred to above;

I/we acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the National or PCT International filing date of the continuation-in-part application.

All statements made herein of my/our own knowledge are true, all statements made herein on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.

**FULL NAME OF INVENTOR(S)**Inventor one: Zhaoyu WangCitizen of: Canada

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Inventor two: Stephan LutzCitizen of: GermanySignature: S. LutzDate: 06.05.04Inventor three: Karl D. InglehartCitizen of: Canada

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Inventor four: \_\_\_\_\_

Citizen of: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

☐ Additional inventors or a legal representative are being named on \_\_\_\_\_ additional form(s) attached hereto.

This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 minute to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: P.O. Box 1450, Alexandria, VA 22313-1450.

Docket No. 130109.465

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## DECLARATION (37 CFR 1.63) FOR UTILITY OR DESIGN APPLICATION USING AN APPLICATION DATA SHEET (37 CFR 1.76)

Title of Invention	METHOD AND APPARATUS FOR LOCATING INTERNAL TRANSFER LEAKS WITHIN FUEL CELL STACKS
--------------------	--

As the below named inventor(s), I/we declare that:

This declaration is directed to:

- ☐ The attached application, or  
☒ Application No. 10/754,451, filed on January 9, 2004,  
☐ as amended on \_\_\_\_\_ (if applicable);

I/we believe that I/we am/are the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought;

I/we have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment specifically referred to above;

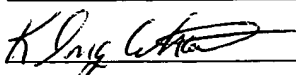
I/we acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the National or PCT International filing date of the continuation-in-part application.

All statements made herein of my/our own knowledge are true, all statements made herein on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.

### FULL NAME OF INVENTOR(S)

Inventor one:	Zhaoyu Wang	Citizen of:	Canada
Signature:	_____	Date:	_____

Inventor two:	Stephan Lutz	Citizen of:	Germany
Signature:	_____	Date:	_____

Inventor three:	Karl D. Inglehart	Citizen of:	Canada
Signature:		Date:	02/04/04

Inventor four:	_____	Citizen of:	_____
Signature:	_____	Date:	_____

☐ Additional inventors or a legal representative are being named on \_\_\_\_\_ additional form(s) attached hereto.

This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 minute to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: P.O. Box 1450, Alexandria, VA 22313-1450.

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ASSIGNMENT

WHEREAS, we, **Zhaoyu Wang**, having a mailing address of #4 John Bricker Road, Cambridge, Ontario, Canada N3H 4R8; **Stephan Lutz**, having a mailing address of Wichertstrasse 68, Berlin, Germany D-10439; and **Karl D. Inglehart**, having a mailing address of 6177 187A Street, Surrey, British Columbia, Canada V3S 7P2 (hereinafter referred to as ASSIGNORS), are the joint inventors of an invention entitled "**METHOD AND APPARATUS FOR LOCATING INTERNAL TRANSFER LEAKS WITHIN FUEL CELL STACKS**," as described and claimed in the specification for which an application for United States letters patent was filed on January 9, 2004 and assigned Application No. 10/754,451. This application claims the benefit of U.S. Provisional Patent Application No. 60/438,915 filed January 9, 2003;

WHEREAS, **Ballard Power Systems Inc.** (hereinafter referred to as ASSIGNEE), a corporation of Canada having a place of business at 4343 North Fraser Way, Burnaby, British Columbia, Canada V5J 5J9, is desirous of acquiring the entire right, title and interest in and to the invention and in and to any letters patent that may be granted therefor in the United States and in any and all foreign countries;

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, ASSIGNORS hereby sell, assign and transfer unto said ASSIGNEE the entire right, title and interest in and to said invention, said application and any and all letters patent which may be granted for said invention in the United States of America and its territorial possessions and in any and all foreign countries, and in any and all divisions, reissues and continuations thereof, including the right to file foreign applications directly in the name of ASSIGNEE and to claim priority rights deriving from said United States application to which said foreign applications are entitled by virtue of international convention, treaty or otherwise, said invention, application and all letters patent on said invention to be held and enjoyed by ASSIGNEE and its successors and assigns as fully and entirely as the same would have been held and enjoyed by ASSIGNORS had this assignment, transfer and sale not been made. ASSIGNORS hereby authorize and request the Commissioner of Patents and Trademarks to issue all letters patent on said invention to ASSIGNEE. ASSIGNORS agree to execute all instruments and documents required for the making and prosecution of applications for United

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Application No. 10/754,451

States and foreign letters patent on said invention, for litigation regarding letters patent, or for the purpose of protecting title to said invention or letters patent therefor.

_____	_____
Date	Zhaoyu Wang
City of _____)	
Province of _____)	ss.

I certify that I know or have satisfactory evidence that Zhaoyu Wang is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated \_\_\_\_\_

Signature of  
Notary Public \_\_\_\_\_

Printed Name \_\_\_\_\_

My appointment does not expire.

**COPY**

06.05.04  
Date

S. [Signature]  
Stephan Lutz

Witness: [Signature] Mainwald

Date: 07.05.04

**COPY**

02/04/04  
Date

K D Inglehart  
Karl D. Inglehart

City of Burnaby)  
Province of B.C.)

ss.

I certify that I know or have satisfactory evidence that Karl D. Inglehart is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated Feb 4, 2004  
Signature of Notary Public Victor Tuomi  
Printed Name VICTOR TUOMI

My appointment does not expire.

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**BALLARD**



Express Mail No. EV336651704US

Ballard Power Systems Inc.  
9000 Glenlyon Parkway  
Burnaby BC  
Canada V5J 5J9  
Telephone 604.454.0900  
Facsimile 604.412.4700

November 13, 2001

**COPY**

Zhaoyu Wang  
Apt 208 7155 Granville St  
Vancouver, BC  
V6P 4X6

Dear Zhaoyu:

This document sets out the terms and conditions of your employment with Ballard Power Systems Inc. ("Ballard"). You should read this Employment Agreement (the "Agreement") carefully as it describes important rights and obligations that you have as a result of your employment with Ballard.

The Agreement will be effective from and after the date on which the closing (anticipated on or before November 30, 2001) of the transaction, in which Ballard will gain control of Ecostar Electric Drive Systems L.L.C. and Xcellsis AG pursuant to an agreement made between DaimlerChrysler AG, Ford Motor Company, Ballard, and certain related entities, occurs (the "Effective Date"). This Agreement is expressly conditional upon completion of such transaction and will have no effect if such transaction does not close for any reason. In addition, if you do not accept the terms and conditions set out in this Agreement by signing and returning it, this Agreement will have no effect.

When used in this Agreement the term "Ballard Group" refers to Ballard, and all related or affiliated companies or divisions, or any one of them (individually referred to as the "members" of the group).

In consideration of the salary increase being provided to me by Ballard during my next pay period, and for other good and valuable consideration described in this Agreement, Ballard and I agree as follows:

**1. Termination of Former Agreement and No Impediments**

As of the Effective Date, I agree and acknowledge that my previous employment agreement (the "Former Agreement") is terminated and is replaced by this Agreement. Ballard will for all employment purposes recognize my previous service with any member of the Ballard Group and my Original Date of Hire set out in Schedule A.

Unless I have otherwise advised Ballard in writing, I represent and warrant to Ballard that I am free to accept employment with Ballard and that I am not bound by, or subject to, any agreements with any other person or organization that would be an impediment to, or prevent me from, fulfilling my duties and responsibilities with Ballard. I represent that my employment and

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contemplated duties as an employee of Ballard do not and will not violate or cause me to be in breach of any obligation or covenant made to any former employer, and I will not take any action during my employment with Ballard that would be in violation or breach of any contractual or legal obligation that I may have to any former or concurrent employer.

## **2. Authority to Work**

If I am unauthorized or unable to legally work within Canada, then this Agreement and my employment is expressly conditional upon my obtaining and continuing to have legal authority from Human Resources Development Canada, if required, and Citizenship and Immigration Canada to work in Canada. Ballard will take appropriate steps on my behalf to apply for and obtain such authority and will provide me with assistance that I require in the application process. I will assist Ballard in the application process as required. If, despite these efforts by me and Ballard, I am unable to obtain legal authority to work in Canada, this Agreement will be of no force or effect.

## **3. Basic Terms**

The attached Schedule "A" confirms my position with Ballard and my compensation and benefits. I will perform my duties at a level of performance deemed appropriate by Ballard, follow all reasonable directions of management, abide by all corporate practices, all policies and guidelines from time to time published by the Ballard Group and will undertake such additional responsibilities as are determined by my supervisor. I understand that my duties and responsibilities may be changed from time to time by management as reasonably required. My compensation and benefits may be adjusted from time to time in accordance with the Ballard Group's practice. Despite any such changes to my duties, responsibilities, compensation or benefits, this Agreement will continue to govern the terms and conditions of my employment. My employment with Ballard will continue indefinitely or until terminated as provided in this Agreement, including Schedule A.

## **4. Full Time and Attention**

I will devote my full time attention, energy and efforts to my employment with Ballard and will not, without the written consent of Ballard, engage in the rendering of services or in any other business activity (whether or not for gain, profit or other pecuniary advantage). Provided that I comply with these obligations, this Agreement will not prevent me from expending a reasonable amount of time on the activities of community and similar non-profit organizations.

## **5. Ballard Business**

I understand and agree that "Ballard Business" means the research, development, manufacture, marketing or sale, worldwide, by any member of the Ballard Group, of proton exchange membrane fuel cells, fuel cell systems, fuel cell engines, fuel cell power generators, power conversion systems and electric drive systems, as well as related components and materials. For that reason, the identification, development, enhancement and protection of Ballard Intellectual Property and other Confidential Information are key elements of the Ballard Business and that of the Ballard Group.

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## 6. Protection of Intellectual Property

6.1 Definition of Intellectual Property. The term "Intellectual Property" shall include, without limitation, any invention, design, idea, work, trademark and servicemarks, and applications and registrations thereof, patent, patent application, innovation, creation, concept, moral right, device, tool, report, material, document, research, sketch, compilation of information, analysis, know-how, copyrights and applications and registrations thereof, mask work, trade secret, right of privacy, data, formula, method, process, system, technique, mold, jig, dye, prototype, product, sample, equipment, machinery, customer list or business practice.

6.2 Ballard Intellectual Property. The term "Ballard Intellectual Property" shall include, but is not limited to, any Intellectual Property which I make or conceive of solely, or jointly or in common with others during the term of my employment with Ballard or which were conceived of, commenced, or completed solely, or jointly or in common with others, during any term of my employment prior to the date hereof with Ballard, or any other member of the Ballard Group, whether or not I am or was specifically instructed to make or conceive the same, whether or not patentable, and whether or not I do so or did so on Ballard time, or on the premises of any of the members of the Ballard Group that:

- (i) is or was within the scope of my employment relationship;
- (ii) relates in any manner, directly or indirectly, to the Ballard Business; or
- (iii) which results from the use of tangible or intangible property (including Intellectual Property) owned, licensed, leased or contracted by any member of the Ballard Group.

6.3 Ownership of Ballard Intellectual Property. I agree that all Ballard Intellectual Property and the benefits thereof shall immediately become the sole and exclusive property of Ballard and its assigns. I agree to hold Ballard Intellectual Property in trust for the sole right and benefit of Ballard. I agree to and hereby assign to Ballard, or its designee, without further compensation, all my right, title and interest in and to any and all Ballard Intellectual Property, and any and all rights and benefits resulting therefrom. I further agree that original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and on behalf of Ballard are the sole property of Ballard and constitute "works made in the course of employment" under the *Copyright Act*, R.S.C. 1985, c. C-42, as amended, and "works made for hire" as that term is defined in the *United States Copyright Act*. To the extent that any such Intellectual Property does not constitute "works made in the course of employment" or "works made for hire", I irrevocably assign and convey all my rights, title and interest subsisting in such Intellectual Property from and after its creation and throughout the world to Ballard, or its designee, free of all liens, claims or reservations.

6.4 Ballard as Agent. If Ballard is unable because of my mental or physical incapacity or other cause to secure my signature to apply for or to pursue any application for any Canadian or foreign patents or copyright, trademark or other registrations covering Intellectual Property assigned to Ballard as above, then I hereby irrevocably designate and appoint Ballard and its duly authorised officers and agents as my agent, to act for and in my behalf and stead to execute

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and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, or copyright, trademark or other registrations thereon with the same legal force and effect as if executed by me. I agree that my obligations in this paragraph shall continue after the termination of this Agreement.

6.5 Assistance required for the Protection of Intellectual Property. During and after my employment with Ballard, I agree to assist Ballard, or its designee, without any further compensation to me, to secure Ballard's rights in any Intellectual Property in any and all countries and in every proper way, at Ballard's expense, including:

- (i) providing Ballard with all pertinent information and data relating to the Intellectual Property;
- (ii) signing all applications, specifications, oaths, assignments and all other instruments which Ballard shall deem necessary in order to apply for and obtain such rights and in order to transfer to Ballard the sole and exclusive right, title and interest in and to such Intellectual Property; and
- (iii) assisting in any legal proceedings (including proceedings in any court, before any administrative tribunal, or any other proceeding affecting the rights in the Intellectual Property) relating to the Intellectual Property.

6.6 Disclosure of Intellectual Property. I agree that I will promptly make full written disclosure, to Ballard (or any persons designated by it), without cost, of all available information relating to all Intellectual Property, whether I think they qualify as Ballard Intellectual Property or not. I will include all necessary plans and models in these disclosures. I will keep Ballard informed on a regular basis of all Intellectual Property which I make or which I am working on during my employment, whether or not I believe it to be within the scope of my employment or not, which relates in any manner directly or indirectly to my employment with Ballard.

6.7 Written Requests. From time to time, I may ask to have Intellectual Property developed, or to be developed, by me that would otherwise qualify as Ballard Intellectual Property, treated as my property. Alternatively, I may ask for specific material to be treated as owned jointly by Ballard and me (without any obligation of royalties or accounting among co-owners). I understand that my request should be in writing and identify the material involved with reasonable precision, and that it must be made before any registration or commercial use of this material by Ballard. Whether or not a request is approved will be in Ballard's absolute and unfettered discretion and any request that is not approved in writing by the Director, Intellectual Property of Ballard within thirty (30) days after a request being made will be deemed denied and the material will remain the property of Ballard.

6.8 Employee Intellectual Property. I have attached as Exhibit "A" a list describing all Intellectual Property which was made by me prior to my employment with Ballard and/or in which I have an interest which relates to the Ballard Business or any of the products, processes, machines or services being developed, manufactured, used, or sold by any member of the Ballard Group (collectively "Prior Intellectual Property"). If no list is attached, I represent that there is no such Prior Intellectual Property. "Employee Intellectual Property" is all Intellectual Property

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developed by me outside the scope of this Agreement and includes but is not limited to Prior Intellectual Property. I understand that if I do not have a legal interest in certain Intellectual Property that I have classified as Employee Intellectual Property, then such Intellectual Property will not constitute Employee Intellectual Property even if it is listed in Exhibit A or developed outside of this Agreement.

6.9 Use of Employee Intellectual Property. I hereby grant and agree to grant to all members of the Ballard Group a non-exclusive, royalty-free, irrevocable, perpetual, world-wide, sub-licensable, transferable licence to make, have made, modify, use, sell, offer to sell, import, copy, distribute and otherwise practice and exploit all Employee Intellectual Property in which I have an interest that:

- (i) I incorporate into a Ballard product, process, machine or service; or
- (ii) I use, instruct Ballard to use, or otherwise authorize Ballard to use.

I will identify with reasonable precision all Employee Intellectual Property included in any Intellectual Property, items, or work products that I provide to Ballard but I understand that such identification does not overrule the terms of this Agreement and that such material will be Ballard Intellectual Property if it qualifies as such under this Agreement, notwithstanding any identification I may make.

6.10 Maintenance of Records. I agree to keep and maintain adequate and current records of all Intellectual Property made by me (solely or jointly with others) during the term of my employment with Ballard. The records will be in the form of notes, sketches, drawings, and any other format that may be specified by Ballard. The records will be available to and remain the sole property of Ballard at all times.

6.11 Warrant of Originality. I will warrant that, unless specified by me in advance, in writing, all Intellectual Property developed or provided by me under this Agreement will be original to me and will not, when provided to, or when used by or exploited by any member of the Ballard Group, infringe in any respect on the rights or property of me or any other person. Because it could impair the Intellectual Property of a member of the Ballard Group, I will not use any equipment, supplies, facilities or proprietary information of any other person unless Ballard expressly permits me to do so. I further agree not to disclose to any member of the Ballard Group or use in the Ballard Business any information or material relating to the business of a third party that is not intended by that party to be disclosed to a member of the Ballard Group.

6.12 Waiver of Moral Rights. I hereby waive any moral rights I may have or may acquire in any Ballard Intellectual Property or works that are included in Ballard Intellectual Property or any Employee Intellectual Property in which Ballard or any other member of the Ballard Group obtains a licence pursuant to section 6.9 and will provide waivers from time to time as requested by Ballard. If for any reason the foregoing waiver is inoperative or invalid, I agree not to assert any such moral rights.

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## 7. Confidentiality

7.1 Confidential Information. "Confidential Information" means information known or used by any member of the Ballard Group in connection with the Ballard Business that is not publically known or available, including but not limited to personnel information, customer information, financial information, marketing information, business opportunities, technology, research and development, manufacturing and information relating to Intellectual Property owned, licensed, or used by a member of the Ballard Group or in which a member of the Ballard Group otherwise has an interest. I acknowledge that the Confidential Information is the exclusive property of the members of the Ballard Group. Confidential Information includes the information of others that members of the Ballard Group are required to keep confidential.

7.2 Use of Confidential Information. I agree at all times during the term of my employment and thereafter, to hold in strictest confidence, and not to use or attempt to use, except in the performance of my duties on behalf of Ballard, and not to disclose to any person or entity without written authorization of the Director, Intellectual Property of Ballard, or his or her designee, any Confidential Information of any member of the Ballard Group. I understand that all Confidential Information, which I am exposed to during my employment, whether created by me or others, constitutes the property of Ballard and any other member of the Ballard Group and shall not be copied or removed from Ballard premises except in the pursuit of the Ballard Business. I acknowledge and agree that the unauthorized disclosure of any Confidential Information during the term of my employment will justify the immediate termination for cause of my employment by Ballard, which will not prohibit any exercise by Ballard of any other rights or remedies available to it at law or in equity.

7.3 Former Employer Information. I agree that, during my employment with Ballard, I will not improperly use or disclose any proprietary information or trade secrets of any former employer or other person or entity with whom I have an agreement or duty to keep such information or secrets confidential, if any, and that I will not bring onto the premises of Ballard any unpublished document or proprietary information belonging to any such employer, person or entity unless consented to in writing by such employer, person or entity.

7.4 Third Party Information. I recognise that Ballard has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on Ballard's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person or entity or to use it except as necessary in carrying out my work for Ballard, consistent with Ballard's or any other member of the Ballard Group's agreement with such third party.

7.5 Safeguarding Confidential Information. I agree to maintain and safeguard the confidentiality of the Confidential Information of the members of the Ballard Group and any confidential or proprietary information obtained from third parties by taking precautions including, but not limited to, ensuring that all items that come into my possession which contain any Confidential Information are marked with prominent confidentiality notices acceptable to Ballard, safeguarding Confidential Information in accordance with Ballard policy.

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**8. Non-Solicitation**

**8.1 Non-Solicitation and Non-Interference.** I agree that I will not, during my employment with Ballard and for a period of two (2) years immediately following the termination of my employment with Ballard, for any reason whatsoever (whether voluntarily or involuntarily), either directly or indirectly, on my own behalf or in association with or on behalf of others, in any manner whatsoever:

(a) solicit or contact, for the purpose of solicitation, in respect of the research, development, manufacture, distribution, marketing or sale, worldwide, of proton exchange membrane fuel cells, fuel cell systems, fuel cell engines, fuel cell power generators, power conversion systems, electric drive systems, as well as related components and materials, any person or entity, with whom I have had direct or indirect contact, that is a customer or active prospect of any member of the Ballard Group at the date I cease to be an employee; or

(b) solicit or contact, for the purpose of solicitation, any employee of the Ballard Group, for employment or any other engagement in respect of the research, development, manufacture, distribution, marketing or sale, worldwide, of proton exchange membrane fuel cells, fuel cell systems, fuel cell engines, fuel cell power generators, power conversion systems, electric drive systems, as well as related components and materials.

Each of (a) and (b) of the foregoing paragraph is a separate covenant and is severable from the others.

**8.2 Geographic Scope.** The geographic scope of Section 8.1 shall extend to anywhere Ballard or any member of the Ballard Group is doing business, has done business or intends to do business during my employment with Ballard.

**9. Equitable Remedies**

I agree that the restrictions in this Agreement are necessary and fundamental for the protection of the business, goodwill and proprietary interests of Ballard and consider the restrictions fair and reasonable for such purpose. I further agree that any breach of the covenants set out in the Confidentiality, Protection of Intellectual Property, Non-Solicitation and Ballard Documents and Materials sections of this Agreement would cause irreparable harm to Ballard, or any other member of the Ballard Group, for which damages would not be an adequate remedy. Accordingly, I agree that if I breach or threaten to breach any such covenants, Ballard will be entitled, in addition to any other remedies and claims which may be available, to obtain, without necessity of a bond, an injunction from a court of competent jurisdiction restraining such breach or threatened breach and to specific performance of any such provision of this Agreement. Nothing herein shall be construed as prohibiting Ballard from pursuing other remedies or other claims available to it for breach or threatened breach, including recovery of damages, costs and expenses sustained by Ballard on account of such breach or threatened breach, including without limitation, legal fees and other costs and expenses.

**10. Resignation**

I may terminate my employment at any time by providing two weeks' notice in writing to Ballard. Ballard may in its discretion choose to treat the termination as effective immediately and in such event Ballard will pay me two weeks' pay based on my annual base salary instead of notice. In addition, Ballard will pay to me all outstanding base salary, and other entitlements set out in Schedule A, attached hereto, and as modified from time to time, owing up to the effective date of resignation. No other payments or compensation will be provided.

**11. Termination**

My employment with Ballard pursuant to this Agreement may be terminated as follows:

**11.1 Termination without Notice or Payment.**

(a) Ballard may terminate my employment at any time without notice of termination or pay instead of notice, for just cause or in the event of my death.

(b) In the event that my employment is terminated under section 11.1(a), I will be provided with all outstanding base salary, and other entitlements set out in Schedule A, attached hereto, as modified from time to time, owing up to the effective date of termination. No other payments or compensation will be provided.

**11.2 Termination With Notice.**

(a) Ballard at its sole discretion and for any reason whatsoever may terminate my employment at any time without cause by providing written notice of termination of employment, such notice to be equivalent to the requirements of the applicable employment standards legislation, as amended, from time to time plus one day for every full month of employment completed from my original date of hire, February 1, 1999 ("Notice Period").

(b) During the Notice Period, I will continue to receive my base salary and benefits. No other notice, pay in lieu of notice or severance obligations, whether written or oral, express or implied will apply.

(c) If I cease to carry out my employment duties during the Notice Period my employment will terminate on the date of such cessation and Ballard's liability to me for salary and benefits will terminate on that date and I will only be eligible to receive any statutory payments to which I may be entitled.



**COPY**

**11.3 Termination with Payment instead of Notice.**

- (a) If payment is made to me by Ballard instead of the notice specified in section 11.2(a) above, the payment will include the amount of all base salary and an amount equal to Ballard's contributions to the purchase of any of the benefits in Schedule A, attached hereto, as amended from time to time, that would have been paid or earned during the Notice Period as determined by Ballard.
- (b) All monies owed to me will be paid as soon as practicable after the date of termination and as required by law.
- (c) Any unvested share options that I have that would have vested during the Notice Period will vest in accordance with the Ballard's Share Option Plan under which those options were granted. All other unvested share options will expire. All vested share options held by me may be exercised up to the date which is thirty (30) days following the last date of the Notice Period and in accordance with the relevant terms under Ballard's Share Option Plan under which those options were granted.
- (d) I will be entitled to any benefits under Ballard's Share Option Plan accruing as a result of any accelerated vesting event which occurs during the Notice Period. I will not be entitled to any benefits under Ballard's Share Option Plan accruing as a result of any accelerated vesting event, as defined in Ballard's Share Option Plan, that takes place after the end of the Notice Period.
- (e) In order to receive the payments described in these sections, in excess of any entitlements under the applicable employment standards legislation, as amended from time to time, I will deliver to Ballard a release in a form provided by Ballard, saving Ballard and any other member of the Ballard Group harmless from all matters arising from my employment by Ballard and the termination of that employment.

**12. Ballard Documents and Materials**

I agree that all Confidential Information, documents, drawings, computer programs, tapes or other records, including copies and summaries thereof prepared by me with respect to my employment or which come into my possession because of my employment are the property of Ballard. Upon termination or resignation of my employment, for any reason whatsoever, I will ensure that Ballard has possession of all such items by delivering such items to Ballard, and I will not retain copies of any such items. I will also deliver to Ballard any and all Ballard property, including but not limited to mobile phones and laptop computers.

**13. General**

**13.1 Survival.** I acknowledge that my obligations under this Agreement with respect to those matters covered under the sections on Protection of Intellectual Property, Ballard Documents and Materials, Confidentiality, and Non-Solicitation will survive the termination of my employment or resignation, regardless of the reasons for or the manner of such termination or resignation and will be binding upon my heirs, executors, administrators and legal representatives.

**COPY**

13.2 Successors and Assigns. Ballard shall have the right to assign this Agreement to its successors and its assigns, in which case all covenants and agreements under this Agreement shall inure to the benefit of the successors and assigns. Except in the event of my death, my rights under this Agreement are not assignable or transferable in any manner.

13.3 Severability. If any clause, provision or part of this Agreement is determined or deemed to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining clauses, provisions or parts will remain in full force and effect.

13.4 Enforceability. If a court of competent jurisdiction construes one or more of the provisions of this Agreement to be unenforceable because of the duration or scope of the provision, such court shall have the power to reduce the duration or scope of such provision and, in its reduced terms, such provision shall then be enforceable and be enforced to the maximum extent allowed under applicable law.

13.5 Governing Law. This Agreement will be governed exclusively by the laws of the Province of British Columbia, and Ballard and I irrevocably and exclusively attorn to the jurisdiction of the courts of British Columbia and agree that any proceeding brought in respect of this Agreement will be brought in such of those courts as is appropriate.

13.6 Currency. All sums of money to be paid or calculated pursuant to this Agreement will be calculated or paid in Canadian currency after deduction of any amounts required by law.

13.7 Employment Standards Act Minimums. Where in this Agreement monies are to be paid or benefits provided and the monies are comprised in whole or in part of a sum that is payable or a benefit is required to be provided under the *Employment Standards Act* of British Columbia or any other statute that requires that money be provided sooner or a benefit provided in a manner different from that specified in this Agreement, Ballard will pay that portion of the money or provide that benefit in accordance with the applicable statutory provision.

13.8 Notices. Any notice, direction, consent or similar matter (a "Notice") required or permitted to be given by Ballard will be sufficiently given if delivered to me personally, or if delivered by courier, to my address last known to Ballard. Any Notice required or permitted to be given by me will be sufficiently given if delivered personally, or if delivered by courier to the attention of Ballard Power Systems Inc., Human Resources, 9000 Glenlyon Parkway, Burnaby, British Columbia, V5J 5J9.

13.9 Entire Agreement. This Agreement, including the Schedules, contains the entire agreement between Ballard and me relating to my employment with Ballard. Ballard has not made any other representations, promises or agreements with me other than those included in this Agreement. This Agreement supersedes any previous understandings, arrangements or agreements that I may have had with Ballard whether oral or written. Furthermore, no future agreement may be made that is inconsistent with this Agreement unless such agreement is in writing. No oral or other agreement will be enforceable or will vary this Agreement unless in writing, signed by an authorized representative of Ballard and by me.


13.10 Time. Time is of the essence in the performance of each obligation under this Agreement.

**COPY**

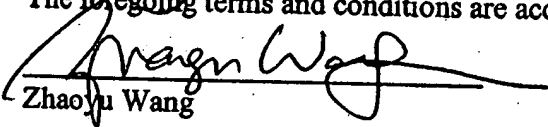
- 11 -

13.11 Understanding and Agreement. By signing below, I confirm that I have had the opportunity to obtain advice in connection with this Agreement. I also confirm that I have read, understood and agreed to all of the terms and conditions set out in this Agreement.

**BALLARD POWER SYSTEMS INC.**

  
Tony Cochrane  
Manager, Engineering

The foregoing terms and conditions are accepted this 22 day of November, 2001.

  
Zhaoyu Wang



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Zhaoyu Wang, Stephan Lutz and Karl D. Inglehart  
Application No. : 10/754,451  
Filed : January 9, 2004  
For : METHOD AND APPARATUS FOR LOCATING INTERNAL  
TRANSFER LEAKS WITHIN FUEL CELL STACKS

Art Unit : 1745  
Docket No. : 130109.465  
Date : May 14, 2004

Mail Stop Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF CINDY LONGLEY IN SUPPORT OF  
PETITION UNDER 37 C.F.R. § 1.47(a)

Commissioner for Patents:

I, Cindy Longley, hereby declare:

1. I am the Director of Intellectual Property at Ballard Power Systems Inc. ("Ballard"), a Canadian corporation having a place of business at 4343 North Fraser Way, Burnaby, British Columbia, Canada V5J 5J9.

2. Zhaoyu Wang ("Mr. Wang"), a joint inventor, terminated his employment with Ballard on or about December 13, 2002 and has refused to execute a Declaration and Assignment for the above-referenced application.

3. By virtue of his Employment Agreement with Ballard, Mr. Wang is under an obligation to execute the Declaration and Assignment for above-referenced application.

4. Mr. Wang is a citizen of Canada and his last known mailing address is the following:

#4 John Bricker Road  
Cambridge, Ontario  
Canada N3H 4R8

5. Attached hereto are the following email messages between Mr. Wang and both Robert Brown ("Mr. Brown"), an administrator in Ballard's Intellectual Property Department, and myself. These email messages evidence Mr. Wang's refusal to execute the Declaration and Assignment for the above-referenced application.

a. Message dated February 4, 2004 from Mr. Brown to Mr. Wang regarding delivery of the above-referenced application and related Assignment and Declaration documents.

b. Message dated February 11, 2004 from Mr. Wang to Mr. Brown acknowledging his receipt of the documents and his willingness to sign upon receipt of a \$650 payment from Ballard.

c. Message dated February 16, 2004 from Mr. Brown to Mr. Wang regarding Mr. Wang's obligation to sign the documents pursuant to his Employment Agreement with Ballard.

d. Message dated March 1, 2004 from Mr. Wang to Mr. Brown further indicating that payment from Ballard was required before he would sign the documents.

e. Message dated March 8, 2004 from Mr. Brown to Mr. Wang requesting clarification regarding whether Mr. Wang was going to sign the papers.

f. Message dated March 8, 2004 from Mr. Wang to Mr. Brown confirming that he would only sign upon receipt of \$650.

g. Message dated March 11, 2004 from myself to Mr. Wang requesting a teleconference with Mr. Wang to discuss the matter.


h. Message dated March 12, 2004 from Mr. Wang to myself regarding his telephone number and availability for a teleconference.

6. On March 12, 2004, I spoke with Mr. Wang by telephone and he stated that he refused to sign the Assignment and Declaration documents.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that

these statements were made with the knowledge that the making of willfully false statements and the like is punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity of any patent issuing from this patent application.

14 May 2004  
Date

  
Cindy Longley

477339



Express Mail No. EV336651704US

-----Original Message-----

From: robert.brown@ballard.com [mailto:robert.brown@ballard.com] Sent:  
Wednesday, February 04, 2004 2:20 PM  
To: Wang, Zhaoyu  
Subject: Signature required - PAT0339-02US

Dear Zhaoyu:

I hope you are well.

I will be sending you a patent application assignment and declaration that requires your signature. This assignment document will need to be notarized by a Notary Public or lawyer. Please send receipts for any costs you incur and we will reimburse you. I will also send you a copy of the application as filed. This application should be read before signing the declaration. Please return the application copy along with the signed documents in the self-addressed envelope I will be sending. Will it be okay to send these documents to your work address or should I send them to your home address?

ATS Automation Systems Inc.  
Automation Systems Division  
250 Royal Oak Road  
Cambridge, Ontario N3H 5M2

# 4 John Bricker Road  
Cambridge, Ontario N3H 4R8

If you have any questions please feel free to contact me.

Thank you and best regards,

Bob Brown

Ballard Power Systems

IP Admin.

T: 604-412-3117

F: 604-412-4716



Express Mail No. EV336651704US

-----Original Message-----

From: zwang@atsautomation.com [mailto:zwang@atsautomation.com]  
Sent: February 11, 2004 2:15 PM  
To: robert.brown@ballard.com  
Subject: RE: Signature required - PAT0339-02US

Hi Bob:

I've received and reviewed the documents and will get it signed and notarized by the same lawyer office I used last time.  
For the cost, I decide to charge Ballard a lump sum payment covering both formal patent application and provisional application I did last year. The efforts involved, you understand, are much more than usual due to the correction to the right original invention file which is necessary.  
The total charge is \$800. This covers all my services provided, my payment to lawyer office (twice), transportation, etc.  
Since Ballard has already paid me \$150 after provisional application, the balance is \$650.

As I mentioned to you earlier, I'm not aware of incentive change by Ballard, will not accept the \$100 incentive and consider it as the partial payment.  
Please let me know if Ballard agrees to pay.  
This E-mail can be considered as my invoice to Ballard.

Thanks

Zhaoyu Wang

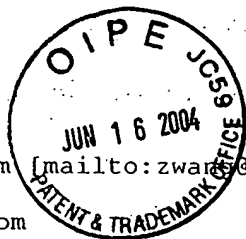




-----Original Message-----

From: robert.brown@ballard.com [mailto:robert.brown@ballard.com] Sent:  
Monday, February 16, 2004 12:16 PM  
To: Wang, Zhaoyu  
Subject: RE: Signature required - PAT0339-02US

Hi Zhaoyu,  
Ballard's Director of IP has advised me that you are obligated to sign these documents under the provisions of your employment contract you signed with Ballard when you were hired. Our policy is to reimburse actual costs (e.g. notary fee) and pay \$100 under our rewards program to ex-employees (which is beyond what we are obliged to do contractually).  
If you have any further questions please contact me, otherwise I look forward to receiving the signed documents.  
Best regards,  
Bob



Express Mail No. EV336651704US

-----Original Message-----

From: zwang@atsautomation.com [mailto:zwang@atsautomation.com] Sent:  
March 1, 2004 12: 50 PM  
To: robert.brown@ballard.com  
Subject: RE: Signature required - PAT0339-02US

- 1 I will do my obligation free with \$0 reward under normal situation or situation requires more efforts caused by my mistake.—
- 2 I'll charge Ballard reasonably on the situation requires more efforts caused by Ballard's mistake.

I hope this is clear and final to that director. I do not want waste my time anymore.

????????????

ATS Automation Tooling Systems

????????????????????????????????

????????????????????????

????????zwang@atsautomation.com?



-----Original Message-----

From: robert.brown@ballard.com [mailto:robert.brown@ballard.com] Sent:  
Monday, March 08, 2004 11:13 AM  
To: Wang, Zhaoyu  
Subject: RE: Signature required - PAT0339-02US

Hi Zhaoyu,

Can you please clarify your remarks below as I am a little confused as to what you are actually saying. Are you going to sign the documents and forward them to me or you're not going to sign the documents unless you are paid?

Thank you,  
Bob



-----Original Message-----

From: zwang@atsautomation.com [mailto:zwang@atsautomation.com]  
Sent: March 8, 2004 3:39 PM  
To: robert.brown@ballard.com  
Subject: RE: Signature required - PAT0339-02US

Hi Bob:

I will sign the documents and forward to you if Ballard makes payment of \$650 as explained in my invoice (my e-mail dated on Feb. 11).

The amount covers cost to lawyer office (twice), transportation, and my extra effort to correct Ballard's mistake in provisional patent application (using wrong original technical file).

Best Regard



Express Mail No. EV336651704US

-----Original Message-----

From: cindy.longley@ballard.com [mailto:cindy.longley@ballard.com] Sent:  
Thursday, March 11, 2004 4:01 PM  
To: Wang, Zhaoyu  
Subject: Patent-related documents

Hi Zhaoyu

I have been trying to reach you by phone today to discuss your concerns re signing the patent-related documents that Bob Brown forwarded to you recently. I think it would be helpful if we could talk. If you have a chance to call me that would be great - my number is 604 412 3139. I will also continue to try to reach you - the numbers I am trying are 519 653 3988 and 519 653 4483 extension 7701. Please confirm I have the correct numbers.  
Thanks  
Cindy

Cindy Longley, Ph.D.  
Director, Intellectual Property

Ballard Power Systems  
4343 North Fraser Way  
Burnaby, BC V5J 5J9

direct: 604.412.3139  
telephone: 604.454.0900  
facsimile: 604.412.4716  
e-mail:cindy.longley@ballard.com

Confidentiality Notice

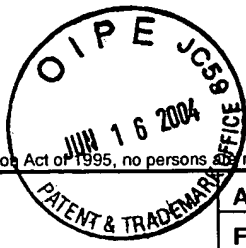
The information contained in this communication is confidential and/or proprietary business or technical data. It is intended for receipt only by the addressee listed above. If you are not the intended recipient, you are hereby notified that any dissemination, copying or distribution of this communication, or the taking of any action in reliance on the contents of this communication, is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (604-454-0900) or electronically by return message, and delete or destroy all copies of this communication.



-----Original Message-----

From: zwang@atsautomation.com [mailto:zwang@atsautomation.com]  
Sent: Friday, March 12, 2004 11:59 AM  
To: cindy.longley@ballard.com  
Subject: RE: Patent-related documents

You can call me at home 519 653 3988 between 7-8pm (your time 4-5pm)



EXPRESS MAIL NO. EV336651704US

PTO/SB/81 (06-03)

Approved for use through 11/30/2005. OMB 0651-0035

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**ELECTION AND POWER OF  
ATTORNEY and  
CORRESPONDENCE ADDRESS  
INDICATION FORM**

<b>Application Number</b>	10/754,451
<b>Filing Date</b>	January 9, 2004
<b>First Named Inventor</b>	Zhaoyu Wang
<b>Title</b>	METHOD AND APPARATUS FOR LOCATING INTERNAL TRANSFER LEAKS WITHIN FUEL CELL STACKS
<b>Art Unit</b>	
<b>Examiner Name</b>	
<b>Attorney Docket Number</b>	130109.465

I hereby appoint:

☒ Practitioners at Seed IP Law Group PLLC, Customer Number: **00500**

OR

☐ Practitioner(s) named below:

Name	Registration Number

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

Please recognize or change the correspondence address for the above-identified application to:

☒ The above-mentioned Customer Number.

OR

☐ The address associated with Customer Number:

OR

<input type="checkbox"/> Firm or Individual Name					
Address					
City		State		ZIP	
Country					
Telephone		Fax			

I am the:

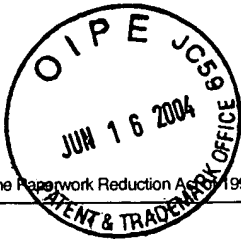
☐ Applicant/Inventor.☒ Assignee of record of the entire interest. See 37 CFR 3.71.

Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☒ As assignee of record of the entire interest I/we hereby elect, under 37 C.F.R. § 3.71, to prosecute the application to the exclusion of the inventor(s).**SIGNATURE of Applicant or Assignee of Record**

<b>Name</b>	Noordin S.K. Nanji – Vice-President, Corporate Strategy & Development
<b>Signature</b>	
<b>Date</b>	26-May-2004
<b>Name</b>	Dave Smith – Chief Financial Officer
<b>Signature</b>	
<b>Date</b>	26-May-2004

This collection of information is required by 37 CFR 1.31 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. 130109.465 /451370

**STATEMENT UNDER 37 CFR 3.73(b)**Applicant/Patent Owner: Zhaoyu Wang; Stephan Lutz; and Karl D. InglehartApplication No./Patent No.: 10/754,451 Filed/Issue Date: January 9, 2004Entitled: METHOD AND APPARATUS FOR LOCATING INTERNAL TRANSFER LEAKS  
WITHIN FUEL CELL STACKSBallard Power Systems Inc.

(Name of Assignee)

a

corporation(Type of Assignee, e.g., corporation, partnership,  
university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.  
The extent (by percentage) of its ownership interest is \_\_\_\_\_%

in the patent application/patent identified above by virtue of either:

- A. ☒ An assignment from the inventor(s) of the patent application/patent identified above.  
The assignment was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

OR

- B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the  
current assignee as shown below:

1. From: \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☐ Copies of assignments or other documents in the chain of title noted in B above are  
attached.

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

26-May-2004  
Date

Telephone Number

Noordin S.K. Nanji

Typed or printed name

Signature

Vice-President, Corporate Strategy &  
Development

Title

26-May-2004  
Date

Telephone Number

Dave Smith

Typed or printed name

Signature

Chief Financial Officer

Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



ASSIGNMENT

**COPY**

WHEREAS, we, **Zhaoyu Wang**, having a mailing address of #4 John Bricker Road, Cambridge, Ontario, Canada N3H 4R8; **Stephan Lutz**, having a mailing address of Wichertstrasse 68, Berlin, Germany D-10439; and **Karl D. Inglehart**, having a mailing address of 6177 187A Street, Surrey, British Columbia, Canada V3S 7P2 (hereinafter referred to as ASSIGNORS), are the joint inventors of an invention entitled "**METHOD AND APPARATUS FOR LOCATING INTERNAL TRANSFER LEAKS WITHIN FUEL CELL STACKS**," as described and claimed in the specification for which an application for United States letters patent was filed on January 9, 2004 and assigned Application No. 10/754,451. This application claims the benefit of U.S. Provisional Patent Application No. 60/438,915 filed January 9, 2003;

WHEREAS, **Ballard Power Systems Inc.** (hereinafter referred to as ASSIGNEE), a corporation of Canada having a place of business at 4343 North Fraser Way, Burnaby, British Columbia, Canada V5J 5J9, is desirous of acquiring the entire right, title and interest in and to the invention and in and to any letters patent that may be granted therefor in the United States and in any and all foreign countries;

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, ASSIGNORS hereby sell, assign and transfer unto said ASSIGNEE the entire right, title and interest in and to said invention, said application and any and all letters patent which may be granted for said invention in the United States of America and its territorial possessions and in any and all foreign countries, and in any and all divisions, reissues and continuations thereof, including the right to file foreign applications directly in the name of ASSIGNEE and to claim priority rights deriving from said United States application to which said foreign applications are entitled by virtue of international convention, treaty or otherwise, said invention, application and all letters patent on said invention to be held and enjoyed by ASSIGNEE and its successors and assigns as fully and entirely as the same would have been held and enjoyed by ASSIGNORS had this assignment, transfer and sale not been made. ASSIGNORS hereby authorize and request the Commissioner of Patents and Trademarks to issue all letters patent on said invention to ASSIGNEE. ASSIGNORS agree to execute all instruments and documents required for the making and prosecution of applications for United

**COPY**

States and foreign letters patent on said invention, for litigation regarding letters patent, or for the purpose of protecting title to said invention or letters patent therefor.

**COPY**

_____	_____
Date	Zhaoyu Wang
City of _____)	
_____)	ss.
Province of _____)	

I certify that I know or have satisfactory evidence that Zhaoyu Wang is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated \_\_\_\_\_  
Signature of \_\_\_\_\_  
Notary Public \_\_\_\_\_  
Printed Name \_\_\_\_\_

My appointment does not expire.

**COPY**

**COPY**

06.05.04  
Date

S. [Signature]  
Stephan Lutz

Witness: [Signature] Mainwald

Date: 07.05.04

**COPY**

**COPY**

02/04/04  
Date

Karl D. Inglehart  
Karl D. Inglehart

City of Burnaby)

Province of BC)

SS.

I certify that I know or have satisfactory evidence that Karl D. Inglehart is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated Feb 4, 2004

Signature of  
Notary Public Victor Tuomi

Printed Name VICTOR TUOMI

My appointment does not expire.

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**BALLARD**



Ballard Power Systems Inc.  
9000 Glenlyon Parkway  
Burnaby BC  
Canada V5J 5J9  
Telephone 604.454.0900  
Facsimile 604.412.4700

November 13, 2001

Zhaoyu Wang  
Apt 208 7155 Granville St  
Vancouver, BC  
V6P 4X6

**COPY**

Dear Zhaoyu:

This document sets out the terms and conditions of your employment with Ballard Power Systems Inc. ("Ballard"). You should read this Employment Agreement (the "Agreement") carefully as it describes important rights and obligations that you have as a result of your employment with Ballard.

The Agreement will be effective from and after the date on which the closing (anticipated on or before November 30, 2001) of the transaction, in which Ballard will gain control of Ecostar Electric Drive Systems L.L.C. and Xcellsis AG pursuant to an agreement made between DaimlerChrysler AG, Ford Motor Company, Ballard, and certain related entities, occurs (the "Effective Date"). This Agreement is expressly conditional upon completion of such transaction and will have no effect if such transaction does not close for any reason. In addition, if you do not accept the terms and conditions set out in this Agreement by signing and returning it, this Agreement will have no effect.

When used in this Agreement the term "Ballard Group" refers to Ballard, and all related or affiliated companies or divisions, or any one of them (individually referred to as the "members" of the group).

In consideration of the salary increase being provided to me by Ballard during my next pay period, and for other good and valuable consideration described in this Agreement, Ballard and I agree as follows:

**1. Termination of Former Agreement and No Impediments**

As of the Effective Date, I agree and acknowledge that my previous employment agreement (the "Former Agreement") is terminated and is replaced by this Agreement. Ballard will for all employment purposes recognize my previous service with any member of the Ballard Group and my Original Date of Hire set out in Schedule A.

Unless I have otherwise advised Ballard in writing, I represent and warrant to Ballard that I am free to accept employment with Ballard and that I am not bound by, or subject to, any agreements with any other person or organization that would be an impediment to, or prevent me from, fulfilling my duties and responsibilities with Ballard. I represent that my employment and

contemplated duties as an employee of Ballard do not and will not violate or cause me to be in breach of any obligation or covenant made to any former employer, and I will not take any action during my employment with Ballard that would be in violation or breach of any contractual or legal obligation that I may have to any former or concurrent employer.

## **2. Authority to Work**

If I am unauthorized or unable to legally work within Canada, then this Agreement and my employment is expressly conditional upon my obtaining and continuing to have legal authority from Human Resources Development Canada, if required, and Citizenship and Immigration Canada to work in Canada. Ballard will take appropriate steps on my behalf to apply for and obtain such authority and will provide me with assistance that I require in the application process. I will assist Ballard in the application process as required. If, despite these efforts by me and Ballard, I am unable to obtain legal authority to work in Canada, this Agreement will be of no force or effect.

## **3. Basic Terms**

The attached Schedule "A" confirms my position with Ballard and my compensation and benefits. I will perform my duties at a level of performance deemed appropriate by Ballard, follow all reasonable directions of management, abide by all corporate practices, all policies and guidelines from time to time published by the Ballard Group and will undertake such additional responsibilities as are determined by my supervisor. I understand that my duties and responsibilities may be changed from time to time by management as reasonably required. My compensation and benefits may be adjusted from time to time in accordance with the Ballard Group's practice. Despite any such changes to my duties, responsibilities, compensation or benefits, this Agreement will continue to govern the terms and conditions of my employment. My employment with Ballard will continue indefinitely or until terminated as provided in this Agreement, including Schedule A.

## **4. Full Time and Attention**

I will devote my full time attention, energy and efforts to my employment with Ballard and will not, without the written consent of Ballard, engage in the rendering of services or in any other business activity (whether or not for gain, profit or other pecuniary advantage). Provided that I comply with these obligations, this Agreement will not prevent me from expending a reasonable amount of time on the activities of community and similar non-profit organizations.

## **5. Ballard Business**

I understand and agree that "Ballard Business" means the research, development, manufacture, marketing or sale, worldwide, by any member of the Ballard Group, of proton exchange membrane fuel cells, fuel cell systems, fuel cell engines, fuel cell power generators, power conversion systems and electric drive systems, as well as related components and materials. For that reason, the identification, development, enhancement and protection of Ballard Intellectual Property and other Confidential Information are key elements of the Ballard Business and that of the Ballard Group.

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## 6. Protection of Intellectual Property

6.1 Definition of Intellectual Property The term "Intellectual Property" shall include, without limitation, any invention, design, idea, work, trademark and servicemarks, and applications and registrations thereof, patent, patent application, innovation, creation, concept, moral right, device, tool, report, material, document, research, sketch, compilation of information, analysis, know-how, copyrights and applications and registrations thereof, mask work, trade secret, right of privacy, data, formula, method, process, system, technique, mold, jig, dye, prototype, product, sample, equipment, machinery, customer list or business practice.

6.2 Ballard Intellectual Property The term "Ballard Intellectual Property" shall include, but is not limited to, any Intellectual Property which I make or conceive of solely, or jointly or in common with others during the term of my employment with Ballard or which were conceived of, commenced, or completed solely, or jointly or in common with others, during any term of my employment prior to the date hereof with Ballard, or any other member of the Ballard Group, whether or not I am or was specifically instructed to make or conceive the same, whether or not patentable, and whether or not I do so or did so on Ballard time, or on the premises of any of the members of the Ballard Group that:

- (i) is or was within the scope of my employment relationship;
- (ii) relates in any manner, directly or indirectly, to the Ballard Business; or
- (iii) which results from the use of tangible or intangible property (including Intellectual Property) owned, licensed, leased or contracted by any member of the Ballard Group.

6.3 Ownership of Ballard Intellectual Property I agree that all Ballard Intellectual Property and the benefits thereof shall immediately become the sole and exclusive property of Ballard and its assigns. I agree to hold Ballard Intellectual Property in trust for the sole right and benefit of Ballard. I agree to and hereby assign to Ballard, or its designee, without further compensation, all my right, title and interest in and to any and all Ballard Intellectual Property, and any and all rights and benefits resulting therefrom. I further agree that original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and on behalf of Ballard are the sole property of Ballard and constitute "works made in the course of employment" under the *Copyright Act*, R.S.C. 1985, c. C-42, as amended, and "works made for hire" as that term is defined in the *United States Copyright Act*. To the extent that any such Intellectual Property does not constitute "works made in the course of employment" or "works made for hire", I irrevocably assign and convey all my rights, title and interest subsisting in such Intellectual Property from and after its creation and throughout the world to Ballard, or its designee, free of all liens, claims or reservations.

6.4 Ballard as Agent If Ballard is unable because of my mental or physical incapacity or other cause to secure my signature to apply for or to pursue any application for any Canadian or foreign patents or copyright, trademark or other registrations covering Intellectual Property assigned to Ballard as above, then I hereby irrevocably designate and appoint Ballard and its duly authorised officers and agents as my agent, to act for and in my behalf and stead to execute

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and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, or copyright, trademark or other registrations thereon with the same legal force and effect as if executed by me. I agree that my obligations in this paragraph shall continue after the termination of this Agreement.

6.5 Assistance required for the Protection of Intellectual Property. During and after my employment with Ballard, I agree to assist Ballard, or its designee, without any further compensation to me, to secure Ballard's rights in any Intellectual Property in any and all countries and in every proper way, at Ballard's expense, including:

- (i) providing Ballard with all pertinent information and data relating to the Intellectual Property;
- (ii) signing all applications, specifications, oaths, assignments and all other instruments which Ballard shall deem necessary in order to apply for and obtain such rights and in order to transfer to Ballard the sole and exclusive right, title and interest in and to such Intellectual Property; and
- (iii) assisting in any legal proceedings (including proceedings in any court, before any administrative tribunal, or any other proceeding affecting the rights in the Intellectual Property) relating to the Intellectual Property.

6.6 Disclosure of Intellectual Property. I agree that I will promptly make full written disclosure, to Ballard (or any persons designated by it), without cost, of all available information relating to all Intellectual Property, whether I think they qualify as Ballard Intellectual Property or not. I will include all necessary plans and models in these disclosures. I will keep Ballard informed on a regular basis of all Intellectual Property which I make or which I am working on during my employment, whether or not I believe it to be within the scope of my employment or not, which relates in any manner directly or indirectly to my employment with Ballard.

6.7 Written Requests. From time to time, I may ask to have Intellectual Property developed, or to be developed, by me that would otherwise qualify as Ballard Intellectual Property, treated as my property. Alternatively, I may ask for specific material to be treated as owned jointly by Ballard and me (without any obligation of royalties or accounting among co-owners). I understand that my request should be in writing and identify the material involved with reasonable precision, and that it must be made before any registration or commercial use of this material by Ballard. Whether or not a request is approved will be in Ballard's absolute and unfettered discretion and any request that is not approved in writing by the Director, Intellectual Property of Ballard within thirty (30) days after a request being made will be deemed denied and the material will remain the property of Ballard.

6.8 Employee Intellectual Property. I have attached as Exhibit "A" a list describing all Intellectual Property which was made by me prior to my employment with Ballard and/or in which I have an interest which relates to the Ballard Business or any of the products, processes, machines or services being developed, manufactured, used, or sold by any member of the Ballard Group (collectively "Prior Intellectual Property"). If no list is attached, I represent that there is no such Prior Intellectual Property. "Employee Intellectual Property" is all Intellectual Property



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developed by me outside the scope of this Agreement and includes but is not limited to Prior Intellectual Property. I understand that if I do not have a legal interest in certain Intellectual Property that I have classified as Employee Intellectual Property, then such Intellectual Property will not constitute Employee Intellectual Property even if it is listed in Exhibit A or developed outside of this Agreement.

6.9 Use of Employee Intellectual Property. I hereby grant and agree to grant to all members of the Ballard Group a non-exclusive, royalty-free, irrevocable, perpetual, world-wide, sub-licensable, transferable licence to make, have made, modify, use, sell, offer to sell, import, copy, distribute and otherwise practice and exploit all Employee Intellectual Property in which I have an interest that:

- (i) I incorporate into a Ballard product, process, machine or service; or
- (ii) I use, instruct Ballard to use, or otherwise authorize Ballard to use.

I will identify with reasonable precision all Employee Intellectual Property included in any Intellectual Property, items, or work products that I provide to Ballard but I understand that such identification does not overrule the terms of this Agreement and that such material will be Ballard Intellectual Property if it qualifies as such under this Agreement, notwithstanding any identification I may make.

6.10 Maintenance of Records. I agree to keep and maintain adequate and current records of all Intellectual Property made by me (solely or jointly with others) during the term of my employment with Ballard. The records will be in the form of notes, sketches, drawings, and any other format that may be specified by Ballard. The records will be available to and remain the sole property of Ballard at all times.

6.11 Warrant of Originality. I will warrant that, unless specified by me in advance, in writing, all Intellectual Property developed or provided by me under this Agreement will be original to me and will not, when provided to, or when used by or exploited by any member of the Ballard Group, infringe in any respect on the rights or property of me or any other person. Because it could impair the Intellectual Property of a member of the Ballard Group, I will not use any equipment, supplies, facilities or proprietary information of any other person unless Ballard expressly permits me to do so. I further agree not to disclose to any member of the Ballard Group or use in the Ballard Business any information or material relating to the business of a third party that is not intended by that party to be disclosed to a member of the Ballard Group.

6.12 Waiver of Moral Rights. I hereby waive any moral rights I may have or may acquire in any Ballard Intellectual Property or works that are included in Ballard Intellectual Property or any Employee Intellectual Property in which Ballard or any other member of the Ballard Group obtains a licence pursuant to section 6.9 and will provide waivers from time to time as requested by Ballard. If for any reason the foregoing waiver is inoperative or invalid, I agree not to assert any such moral rights.

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## **7. Confidentiality**

7.1 **Confidential Information.** "Confidential Information" means information known or used by any member of the Ballard Group in connection with the Ballard Business that is not publically known or available, including but not limited to personnel information, customer information, financial information, marketing information, business opportunities, technology, research and development, manufacturing and information relating to Intellectual Property owned, licensed, or used by a member of the Ballard Group or in which a member of the Ballard Group otherwise has an interest. I acknowledge that the Confidential Information is the exclusive property of the members of the Ballard Group. Confidential Information includes the information of others that members of the Ballard Group are required to keep confidential.

7.2 **Use of Confidential Information.** I agree at all times during the term of my employment and thereafter, to hold in strictest confidence, and not to use or attempt to use, except in the performance of my duties on behalf of Ballard, and not to disclose to any person or entity without written authorization of the Director, Intellectual Property of Ballard, or his or her designee, any Confidential Information of any member of the Ballard Group. I understand that all Confidential Information, which I am exposed to during my employment, whether created by me or others, constitutes the property of Ballard and any other member of the Ballard Group and shall not be copied or removed from Ballard premises except in the pursuit of the Ballard Business. I acknowledge and agree that the unauthorized disclosure of any Confidential Information during the term of my employment will justify the immediate termination for cause of my employment by Ballard, which will not prohibit any exercise by Ballard of any other rights or remedies available to it at law or in equity.

7.3 **Former Employer Information.** I agree that, during my employment with Ballard, I will not improperly use or disclose any proprietary information or trade secrets of any former employer or other person or entity with whom I have an agreement or duty to keep such information or secrets confidential, if any, and that I will not bring onto the premises of Ballard any unpublished document or proprietary information belonging to any such employer, person or entity unless consented to in writing by such employer, person or entity.

7.4 **Third Party Information.** I recognise that Ballard has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on Ballard's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person or entity or to use it except as necessary in carrying out my work for Ballard, consistent with Ballard's or any other member of the Ballard Group's agreement with such third party.

7.5 **Safeguarding Confidential Information.** I agree to maintain and safeguard the confidentiality of the Confidential Information of the members of the Ballard Group and any confidential or proprietary information obtained from third parties by taking precautions including, but not limited to, ensuring that all items that come into my possession which contain any Confidential Information are marked with prominent confidentiality notices acceptable to Ballard, safeguarding Confidential Information in accordance with Ballard policy.

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**8. Non-Solicitation**

8.1 Non-Solicitation and Non-Interference. I agree that I will not, during my employment with Ballard and for a period of two (2) years immediately following the termination of my employment with Ballard, for any reason whatsoever (whether voluntarily or involuntarily), either directly or indirectly, on my own behalf or in association with or on behalf of others, in any manner whatsoever:

(a) solicit or contact, for the purpose of solicitation, in respect of the research, development, manufacture, distribution, marketing or sale, worldwide, of proton exchange membrane fuel cells, fuel cell systems, fuel cell engines, fuel cell power generators, power conversion systems, electric drive systems, as well as related components and materials, any person or entity, with whom I have had direct or indirect contact, that is a customer or active prospect of any member of the Ballard Group at the date I cease to be an employee; or

(b) solicit or contact, for the purpose of solicitation, any employee of the Ballard Group, for employment or any other engagement in respect of the research, development, manufacture, distribution, marketing or sale, worldwide, of proton exchange membrane fuel cells, fuel cell systems, fuel cell engines, fuel cell power generators, power conversion systems, electric drive systems, as well as related components and materials.

Each of (a) and (b) of the foregoing paragraph is a separate covenant and is severable from the others.

8.2 Geographic Scope. The geographic scope of Section 8.1 shall extend to anywhere Ballard or any member of the Ballard Group is doing business, has done business or intends to do business during my employment with Ballard.

**9. Equitable Remedies**

I agree that the restrictions in this Agreement are necessary and fundamental for the protection of the business, goodwill and proprietary interests of Ballard and consider the restrictions fair and reasonable for such purpose. I further agree that any breach of the covenants set out in the Confidentiality, Protection of Intellectual Property, Non-Solicitation and Ballard Documents and Materials sections of this Agreement would cause irreparable harm to Ballard, or any other member of the Ballard Group, for which damages would not be an adequate remedy. Accordingly, I agree that if I breach or threaten to breach any such covenants, Ballard will be entitled, in addition to any other remedies and claims which may be available, to obtain, without necessity of a bond, an injunction from a court of competent jurisdiction restraining such breach or threatened breach and to specific performance of any such provision of this Agreement. Nothing herein shall be construed as prohibiting Ballard from pursuing other remedies or other claims available to it for breach or threatened breach, including recovery of damages, costs and expenses sustained by Ballard on account of such breach or threatened breach, including without limitation, legal fees and other costs and expenses.

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## **10. Resignation**

I may terminate my employment at any time by providing two weeks' notice in writing to Ballard. Ballard may in its discretion choose to treat the termination as effective immediately and in such event Ballard will pay me two weeks' pay based on my annual base salary instead of notice. In addition, Ballard will pay to me all outstanding base salary, and other entitlements set out in Schedule A, attached hereto, and as modified from time to time, owing up to the effective date of resignation. No other payments or compensation will be provided.

## **11. Termination**

My employment with Ballard pursuant to this Agreement may be terminated as follows:

### **11.1 Termination without Notice or Payment.**

(a) Ballard may terminate my employment at any time without notice of termination or pay instead of notice, for just cause or in the event of my death.

(b) In the event that my employment is terminated under section 11.1(a), I will be provided with all outstanding base salary, and other entitlements set out in Schedule A, attached hereto, as modified from time to time, owing up to the effective date of termination. No other payments or compensation will be provided.

### **11.2 Termination With Notice.**

(a) Ballard at its sole discretion and for any reason whatsoever may terminate my employment at any time without cause by providing written notice of termination of employment, such notice to be equivalent to the requirements of the applicable employment standards legislation, as amended, from time to time plus one day for every full month of employment completed from my original date of hire, February 1, 1999 ("Notice Period").

(b) During the Notice Period, I will continue to receive my base salary and benefits. No other notice, pay in lieu of notice or severance obligations, whether written or oral, express or implied will apply.

(c) If I cease to carry out my employment duties during the Notice Period my employment will terminate on the date of such cessation and Ballard's liability to me for salary and benefits will terminate on that date and I will only be eligible to receive any statutory payments to which I may be entitled.

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**11.3 Termination with Payment instead of Notice.**

- (a) If payment is made to me by Ballard instead of the notice specified in section 11.2(a) above, the payment will include the amount of all base salary and an amount equal to Ballard's contributions to the purchase of any of the benefits in Schedule A, attached hereto, as amended from time to time, that would have been paid or earned during the Notice Period as determined by Ballard.
- (b) All monies owed to me will be paid as soon as practicable after the date of termination and as required by law.
- (c) Any unvested share options that I have that would have vested during the Notice Period will vest in accordance with the Ballard's Share Option Plan under which those options were granted. All other unvested share options will expire. All vested share options held by me may be exercised up to the date which is thirty (30) days following the last date of the Notice Period and in accordance with the relevant terms under Ballard's Share Option Plan under which those options were granted.
- (d) I will be entitled to any benefits under Ballard's Share Option Plan accruing as a result of any accelerated vesting event which occurs during the Notice Period. I will not be entitled to any benefits under Ballard's Share Option Plan accruing as a result of any accelerated vesting event, as defined in Ballard's Share Option Plan, that takes place after the end of the Notice Period.
- (e) In order to receive the payments described in these sections, in excess of any entitlements under the applicable employment standards legislation, as amended from time to time, I will deliver to Ballard a release in a form provided by Ballard, saving Ballard and any other member of the Ballard Group harmless from all matters arising from my employment by Ballard and the termination of that employment.

**12. Ballard Documents and Materials**

I agree that all Confidential Information, documents, drawings, computer programs, tapes or other records, including copies and summaries thereof prepared by me with respect to my employment or which come into my possession because of my employment are the property of Ballard. Upon termination or resignation of my employment, for any reason whatsoever, I will ensure that Ballard has possession of all such items by delivering such items to Ballard, and I will not retain copies of any such items. I will also deliver to Ballard any and all Ballard property, including but not limited to mobile phones and laptop computers.

**13. General**

**13.1 Survival.** I acknowledge that my obligations under this Agreement with respect to those matters covered under the sections on Protection of Intellectual Property, Ballard Documents and Materials, Confidentiality, and Non-Solicitation will survive the termination of my employment or resignation, regardless of the reasons for or the manner of such termination or resignation and will be binding upon my heirs, executors, administrators and legal representatives.

13.2 Successors and Assigns. Ballard shall have the right to assign this Agreement to its successors and its assigns, in which case all covenants and agreements under this Agreement shall inure to the benefit of the successors and assigns. Except in the event of my death, my rights under this Agreement are not assignable or transferable in any manner.

13.3 Severability. If any clause, provision or part of this Agreement is determined or deemed to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining clauses, provisions or parts will remain in full force and effect.

13.4 Enforceability. If a court of competent jurisdiction construes one or more of the provisions of this Agreement to be unenforceable because of the duration or scope of the provision, such court shall have the power to reduce the duration or scope of such provision and, in its reduced terms, such provision shall then be enforceable and be enforced to the maximum extent allowed under applicable law.

13.5 Governing Law. This Agreement will be governed exclusively by the laws of the Province of British Columbia, and Ballard and I irrevocably and exclusively attorn to the jurisdiction of the courts of British Columbia and agree that any proceeding brought in respect of this Agreement will be brought in such of those courts as is appropriate.

13.6 Currency. All sums of money to be paid or calculated pursuant to this Agreement will be calculated or paid in Canadian currency after deduction of any amounts required by law.

13.7 Employment Standards Act Minimums. Where in this Agreement monies are to be paid or benefits provided and the monies are comprised in whole or in part of a sum that is payable or a benefit is required to be provided under the *Employment Standards Act* of British Columbia or any other statute that requires that money be provided sooner or a benefit provided in a manner different from that specified in this Agreement, Ballard will pay that portion of the money or provide that benefit in accordance with the applicable statutory provision.

13.8 Notices. Any notice, direction, consent or similar matter (a "Notice") required or permitted to be given by Ballard will be sufficiently given if delivered to me personally, or if delivered by courier, to my address last known to Ballard. Any Notice required or permitted to be given by me will be sufficiently given if delivered personally, or if delivered by courier to the attention of Ballard Power Systems Inc., Human Resources, 9000 Glenlyon Parkway, Burnaby, British Columbia, V5J 5J9.

13.9 Entire Agreement. This Agreement, including the Schedules, contains the entire agreement between Ballard and me relating to my employment with Ballard. Ballard has not made any other representations, promises or agreements with me other than those included in this Agreement. This Agreement supersedes any previous understandings, arrangements or agreements that I may have had with Ballard whether oral or written. Furthermore, no future agreement may be made that is inconsistent with this Agreement unless such agreement is in writing. No oral or other agreement will be enforceable or will vary this Agreement unless in writing, signed by an authorized representative of Ballard and by me.

13.10 Time. Time is of the essence in the performance of each obligation under this Agreement.

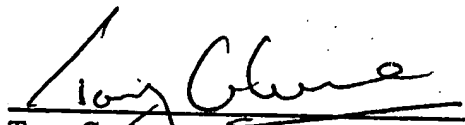


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13.11 Understanding and Agreement. By signing below, I confirm that I have had the opportunity to obtain advice in connection with this Agreement. I also confirm that I have read, understood and agreed to all of the terms and conditions set out in this Agreement.

**BALLARD POWER SYSTEMS INC.**

  
Tony Cochrane  
Manager, Engineering

The foregoing terms and conditions are accepted this 22 day of November, 2001.

  
Zhaoyu Wang